

)	
UNITED STATES OF AMERICA,)	
)	
and)	
)	
STATE OF NEW YORK,)	
)	
<i>Plaintiffs,</i>)	
v.)	Civil Action No.
)	12-cv-8989 (ALC) (GWG)
)	
TWIN AMERICA, LLC, et al.)	ECF CASE
)	
<i>Defendants.</i>)	
)	

Plaintiffs United States of America and State of New York (collectively, “Plaintiffs”) and Defendants Coach USA, Inc. and International Bus Services, Inc. (collectively, the “Coach Defendants”) move this Court to reopen discovery for the limited purpose of discovering whether the Coach Defendants have properly preserved evidence in this case and provided all non-privileged documents and information responsive to the Plaintiffs’ discovery requests.

2. On April 28, 2014, the Court received an anonymous email (the “Anonymous Email”) sent to Judge Carter’s email address. Later that day, Judge Gorenstein’s chambers forwarded the Anonymous Email to all counsel of record for Plaintiffs and Defendants, with the instruction that Judge Gorenstein was “not directing the parties to take any specific action with

respect to this email but is instead leaving such action up to each party's judgment."

3. In the course of a preliminary investigation of the allegations in the Anonymous Email, Plaintiffs received materials from a non-party that appear to be from the Coach Defendants. These materials, taken together with the allegations in the Anonymous Email, raise questions about whether there is relevant information that was not previously disclosed or produced during discovery and whether document preservation obligations were met.

4. In light of these developments, Plaintiffs and the Coach Defendants seek to reopen discovery for the limited purpose of investigating the allegations in the Anonymous Email, including whether relevant information has not been produced.

5. A district court has "broad discretion to direct and manage the pre-trial discovery process." *Wills v. Amerada Hess Corp.*, 379 F.3d 32, 41 (2d Cir. 2004). Fact discovery may be reopened upon a showing of good cause. *Lopez v. Ramos*, No. 11-cv-007790 (NSR), 2013 WL 6912692, *2-3 (S.D.N.Y. Dec. 30, 2013). Factors relevant to a determination of good cause include the diligence of the moving party and whether the request is opposed. *Id.* Where new information indicates that a party might have failed to produce responsive documents prior to the close of discovery, courts have reopened discovery to permit exploration of whether and when non-production of documents occurred. *See, e.g., Kelly v. Wright Medical Technology, Inc.*, No. 00-Civ.-8808-LAK, 2003 WL 40473, *1 (S.D.N.Y. Jan. 3, 2003) (reopening discovery to allow plaintiff to take a 30(b)(6) deposition to determine whether defendant possessed and failed to produce responsive documents).

6. At this time, the parties do not seek an adjustment to the current schedule. The parties propose to advise the Court of the parties' progress in completing this limited discovery

by June 30, 2014.

7. A Proposed Order Granting the Joint Motion to Reopen Discovery is attached hereto as Attachment 1.

Dated: May 29, 2014

Respectfully submitted,

/s

Kathleen S. O'Neill
U.S. Department of Justice
Antitrust Division
450 Fifth Street, NW, Suite 8000
Washington, DC 20530
(202) 307-2931
kathleen.oneill@usdoj.gov
For Plaintiff United States

/s

Eric J. Stock
Office of the Attorney General
Antitrust Bureau
120 Broadway, 26th Floor
New York, NY 10271-0332
(212) 416-8282
Eric.Stock@ag.ny.gov
For Plaintiff State of New York

/s

Thomas O. Barnett
Covington & Burling LLP
1201 Pennsylvania Ave NW
Washington, DC 20004
(202) 662-6000
tbarnett@cov.com
For the Coach Defendants

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the Joint Motion to Reopen Limited Discovery, and all attachments hereto, to be served via the Court's ECF System upon the following Parties:

For Defendants Twin America, LLC, CitySights LLC, and City Sights Twin, LLC:

Michael P. A. Cohen
Paul Hastings LLP
875 15th Street, NW
Washington, DC 20005
(202) 551-1880
michaelcohen@paulhastings.com

For Defendants Coach USA, Inc. and International Bus Services, Inc.:

Thomas O. Barnett
Covington & Burling LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401
(202) 662-5407
tbarnett@cov.com

Dated: May 29, 2014

/s
Kathleen S. O'Neill
U.S. Department of Justice
Antitrust Division
450 Fifth Street, NW, Suite 8000
Washington, DC 20530
(202) 307-2931
kathleen.oneill@usdoj.gov
For Plaintiff United States